

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Dennis K. Wisecup d/b/a Wisecup Trucking and Wisecup Iron & Metal Boone County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ- 14 NO. 2012-SW- 13
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TO: Dennis K. Wisecup
Wisecup Trucking
202 SW 7th Street
Ogden, IA 50212

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), and Dennis K. Wisecup d/b/a Wisecup Trucking and Wisecup Iron & Metal for the purpose of resolving air quality and solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bill Gross, Senior Environmental Specialist
Field Office 5
401 SW 7th St Suite I,
Des Moines, Iowa 50309-4611
Phone: 319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR

Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which

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authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Dennis K. Wisecup is the deed holder to property located in Boone County at Section 30 T 84N R27, which is locally known as 613 210th Street Ogden, Iowa (210th Street). At this location Mr. Wisecup owns and operates a business known as Wisecup Trucking and or Wisecup Iron & Metal.

2. On July 7, 2004, a complaint was received alleging Mr. Wisecup was engaged in illegal open burning and open dumping at 270th St & F Avenue, Ogden Iowa (farmstead). This property is also owned by Mr. Wisecup. The complainant stated that Mr. Wisecup was dumping solid waste on the farmstead that was from "the old Ogden elevator."

3. On July 9, 2004, Ted Peterson, of the Department, conducted a complaint investigation. Once on site he observed piles of solid waste. Items included various types of metal, brick, an air conditioner, lumber, coated wire, and general household waste items. Portions of the solid waste piles were charred black from burning. Next Mr. Peterson went to the site of the old Ogden elevator where he met with Mr. Wisecup and discussed the complaint and the current disposal project he was working on. Mr. Wisecup stated that all non-salvageable waste material was deposited at the Boone County Landfill. Some of the metal from in and around the building being torn down was being hauled to the farmstead where an employee of Mr. Wisecup's was cutting the metal for salvage. Mr. Wisecup was aware of the open burning being done at the property and stated that all the solid waste was only at the farmstead for a short period of time and would either be hauled away to a landfill or recycled.

4. On August 9, 2004, a Notice of Violation (NOV) was sent to Mr. Wisecup for illegal disposal of solid waste and open burning. Attached to this NOV was a detailed report of the complaint investigation which explained what provisions of the law were violated. This NOV required that the solid waste on the property be disposed of properly.

5. On October 4, 2004, Mr. Peterson went back to the farmstead and documented that the solid waste had been removed, no additional burning had occurred and no further action was necessary to clean up the site.

6. On March 5, 2007, the Boone County Health and Sanitation Department sent Mr. Wisecup a letter informing him that it had received a complaint alleging that a salvage yard was being operated on the farmstead without a salvage yard permit and that a permit application should be submitted to the County.

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7. On October 20, 2009, a permit for Appliance Demanufacturing was issued by the Department to Wisecup Trucking. This permit allows for no more than 50 un-demanufactured appliances on site at one time and informs the permittee that if they exceed this limit financial assurance adjustment is required.

8. On February 2, 2012, Bill Gross an Environmental Specialist Senior with the Department, was in the area of 210th street when he observed dark gray smoke emanating from this facility. Once on site he met with Mr. Wisecup and found two sources of smoke. One was from a propane-fired melting pot just outside the shop building. Mr. Wisecup indicated that he was melting lead and other metals from scrap metal. The second source of smoke was from a pile of miscellaneous demolition and shop wastes northwest of the building. Burning was occurring on top of a large pile of ash which had accumulated from past burning activities. There were also piles of other solid waste in the salvage yard.

9. On February 7, 2012, Mr. Wisecup was sent an NOV for illegal open burning of solid waste, improper disposal of solid waste and failure to obtain an air quality construction permit for the melting of metals. This NOV summarized the relevant law and stated that the matter was being referred to the Department's Legal Services Bureau for enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Wisecup allowed the burning of various solid wastes. The above stated facts demonstrate noncompliance with this provision.

3. 567 IAC 22.1 (1) states

no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to rule 567-22.8(455B), or permits required pursuant to rules 567-22.4(455B) and 567-22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

Mr. Wisecup was operating a propane-fired pot outdoors to melt metals from vehicles and appliance parts. The metals melted include lead and aluminum. An air quality construction permit was not obtained prior to construction of this stationary source nor were the

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requirements for an exemption under 567 IAC 22.1(2) met. Thus, the above stated facts demonstrate noncompliance with this provision.

4. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

5. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Wisecup agrees to do the following:

1. Immediately discontinue the practice of illegal disposal of solid waste and in the future properly dispose of all solid waste;
2. Immediately cease illegal open burning and do not engage in this activity in the future;
3. Within 60 days of the date the Director signs this order submit landfill receipts verifying proper disposal of the solid waste (solid waste includes at a minimum ashes, debris in the ash pile and trash) to the Department's Field Office 5 at the address listed above;
4. Within 60 days, submit an air quality construction permit application to the Department pursuant to 567 IAC 22.1; and
5. Mr. Wisecup shall pay a penalty in the amount of \$5,500.00 to the Department within 30 days of the date the Director signs this order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the

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issuance of an administrative consent order with a \$5,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It is estimated that it would have cost approximately \$30.00 a ton to properly dispose of the solid waste at a landfill, and it is estimated that approximately 25 tons of waste was burned. Further it is estimated that there would have been a fee to use a truck to dispose of the solid waste which would have cost approximately \$750.00. Therefore, it is estimated that \$1,500.00 has been saved by not properly disposing of the waste. Therefore, that amount is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Further the melting of lead and other metals in an open pot can result in the release of hazardous air pollutants, which creates a health risk to the people in the area. Failure to obtain an air quality construction permit for the melting of metals threatens the integrity of the air quality permit program. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Mr. Wisecup has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Moreover, in 2004, Mr. Wisecup was sent an NOV for illegal disposal and open burning of solid waste thus, Mr. Wisecup had actual knowledge that his actions were in violation of the law. Based on the above considerations, \$2,000.00 is assessed for this factor.

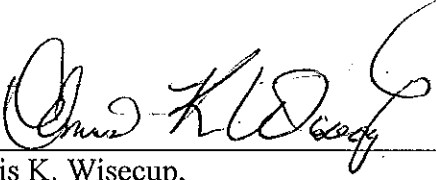
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Wisecup. For that reason, Mr. Wisecup waives his rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

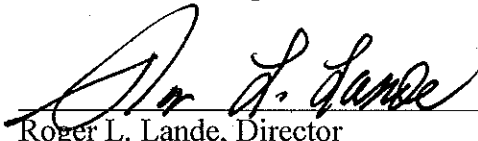
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Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



Dennis K. Wisecup,

Dated this 15 day of
May, 2012.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 21st day of
May, 2012.

Carrie Schoenebaum; DNR Field Office 5; EPA; VI.C and VII.C.1.